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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ELIZABETH McCOY, individually and on  
behalf of herself and all others similarly  
situated,

Plaintiff,

v.

BETSEY JOHNSON, INC., DOES 1  
THROUGH 10,

Defendants.

CASE NO. C 07-4782 SC

**DENYING**

**STIPULATION FOR STAY OF  
PROCEEDINGS; ORDER**

WHEREAS Plaintiff Elizabeth McCoy filed this putative class action against Defendant Betsey Johnson, Inc. alleging violations of the federal Fair and Accurate Credit Transactions Act (FACTA) for failure to block the expiration date on receipts provided to customers for sales transactions involving credit or debit card purchases;

WHEREAS Plaintiff filed the putative class action even though Defendant had properly and timely truncated credit card and debit card numbers from customer sales receipts;

WHEREAS Defendant's counsel has advised Plaintiff's counsel of this Court's order in *Hile v. Frederick's of Hollywood Stores, Inc.*, N.D. Cal. Case No. C07-0715 SC, filed on October 17, 2007, denying class action certification in a putative class action alleging identical facts;



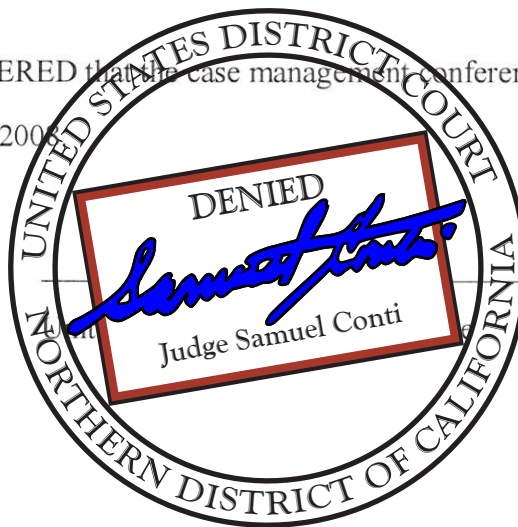
ORDER

Based on the Stipulation of the parties, and good cause appearing:

IT IS HEREBY ORDERED that this matter is stayed pending the Ninth Circuit's decision on the propriety of class action treatment in putative class actions alleging as the sole FACTA violation the failure to block the expiration date of credit and/or debit card on customer sales receipts. Either side may dissolve this stay on 30 days' notice by filing with the Court a "Notice of Termination of Stay."

IT IS HEREBY FURTHER ORDERED that the case management conference set for February 22, 2008 is rescheduled for August 22, 2008.

DATED: 1/25/08



JMBM  
Jeffer Mangels  
Butler & Marcano LLP

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ZACHARY HILE, on behalf of himself )	Case No. 07-0715 SC
and all others similarly situated, )	
Plaintiffs, )	ORDER DENYING
v. )	PLAINTIFF'S MOTION
FREDERICK'S OF HOLLYWOOD STORES, )	FOR CLASS
INC., FREDERICK'S OF HOLLYWOOD, )	CERTIFICATION
INC., )	PURSUANT TO FEDERAL
Defendants. )	RULE OF CIVIL
	<u>PROCEDURE 23</u>

I. INTRODUCTION

Plaintiff Zachary Hile ("Plaintiff") filed a Motion for Class Certification Pursuant to Federal Rule of Civil Procedure 23 ("Motion"). Docket No. 13. Frederick's of Hollywood Stores, Inc., and Frederick's of Hollywood, Inc. ("Defendants"), opposed the motion and Plaintiff filed a Reply. See Docket Nos. 20, 27. For the following reasons, Plaintiff's Motion is DENIED without prejudice. Plaintiff may refile a Motion for Class Certification after an opinion is issued in another case now pending before the Ninth Circuit Court of Appeals that raises the same issues raised by the parties in the present action.<sup>1</sup>

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<sup>1</sup> As discussed below, the case now pending before the Ninth Circuit is Soualian v. Int'l Coffee and Tea LLC, CV 07-0502, 2007 U.S. Dist. LEXIS 44208, at \*1 (C.D. Cal. June 11, 2007), appeal docketed, No. 07-80100 (9th Cir. Sept. 13, 2007).

EXHIBIT A



Pursuant to Federal Rule of Civil Procedure 23 ("Rule 23"), Plaintiff now seeks to certify the class of individuals "to whom Defendant, after December 4, 2006, provided an electronically printed receipt at the point of a sale or transaction on which Defendant printed expiration dates in violation of 15 U.S.C. § 1681c(g)." Mot. at 5.

Three District Courts in California have recently denied motions for class certification in cases with factual allegations practically indistinguishable from the case at bar. See Spikings v. Cost Plus, Inc., CV 06-8125, 2007 U.S. Dist. LEXIS 44214, at \*1 (C.D. Cal. May 25, 2007); Soualian, 2007 U.S. Dist. LEXIS 44208,

<sup>3</sup> 15 U.S.C. § 1681c(g)(1) states that "no person that accepts credit cards or debit cards for the transaction of business shall print more than the last five digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction."

1 at \*1; Najarian v. Charlotte Russe, CV 07-0501, 2007 U.S. Dist.  
2 LEXIS 59879, at \*1 (C.D. Cal. June 12, 2007). In all three cases,  
3 the plaintiffs alleged that the defendants had violated FACTA by  
4 including credit card numbers, expiration dates, or both on  
5 printed receipts. See Spikings, 2007 U.S. Dist. LEXIS 44214, at  
6 \*1; Soualian, 2007 U.S. Dist. LEXIS 44208, at \*1; Najarian, 2007  
7 U.S. Dist. LEXIS 59879, at \*1. In all three cases, class  
8 certification was denied because the courts found that the  
9 plaintiffs could not satisfy Federal Rule of Civil Procedure  
10 23(b)(3).<sup>4</sup> See Spikings, 2007 U.S. Dist. LEXIS 44214, at \*17;  
11 Soualian, 2007 U.S. Dist. LEXIS 44208, at \*13; Najarian, 2007 U.S.  
12 Dist. LEXIS 59879, at \*6.

13 In Soualian, the district court's denial of class  
14 certification was appealed and is now pending before the Ninth  
15 Circuit Court of Appeals. See Soualian, 2007 U.S. Dist. LEXIS  
16 44208, appeal docketed, No. 07-80100 (9th Cir. Sept. 13, 2007).  
17 In the interests judicial efficiency and conservation of  
18 resources, this Court DENIES, without prejudice, Plaintiff's  
19 Motion for Class Certification. Once the Ninth Circuit issues an  
20 opinion in the pending case of Soualian, Plaintiff may refile a  
21 Motion for Class Certification.

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26 <sup>4</sup> Rule 23(b)(3) requires that common questions of law or fact  
27 predominate over individual questions and that "a class action is  
28 superior to other available methods for the fair and efficient  
adjudication of the controversy." Fed. R. Civ. P. 23(b)(3).

1 IV. CONCLUSION

2 For the foregoing reasons, Plaintiff's Motion for Class  
3 Certification is DENIED without prejudice. Plaintiff may refile  
4 the Motion after the Ninth Circuit issues an opinion in Soualian,  
5 2007 U.S. Dist. LEXIS 44208, appeal docketed, No. 07-80100 (9th  
6 Cir. Sept. 13, 2007).

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9 IT IS SO ORDERED.

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11 Dated: October 17, 2007



12 UNITED STATES DISTRICT JUDGE  
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